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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Number 1199

HUEY P. MEAUX AND CHARLIE BOOTH,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH JUDICIAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Petitioners Huey P. Meaux and Charlie Booth pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case on January 4, 1968, and its denial of Petitioners' motion for rehearing on February 7, 1968.

CITATIONS OF OPINIONS BELOW

The opinion of the Court of Appeals printed in Appendix A hereto, page 8 as yet unreported, affirms the convictions and judgments contained in the indictment.

JURISDICTION

Judgment of the Court of Appeals was entered on January 4, 1968, page 8 infra. Timely petition for re-hearing

was filed on January 12, 1968, and denied on February 7, 1968. Jurisdiction of this Court is invoked under Title 28 U. S. C. A. Section 1254 (1).

QUESTIONS PRESENTED

In a prosecution for an alleged violation of Title 18 Section 371, U. S. Code involving the alleged interstate transportation of a woman in violation of the Mann Act for purposes of prostitution (Title 18, Section 2421 - 2424 U. S. C. A.), the following questions are raised as a result of said trial.

I.

(a) Whether the argument of the United States attorney was highly inflammatory and constituted reversible error.

(b) Whether Petitioners were denied effective assistance of trial counsel.

STATUTES INVOLVED

Statutes involved in this case include Title 18, Section 371, United States Code Annotated, and Title 18, Sections 2421 - 2424, U. S. C. A. (Cited as Appendix B attached hereto).

STATEMENT

The Petitioners were tried and convicted in the United States District Court for the Southern District of Texas, on an indictment charging them with conspiring to violate the provisions of the Mann Act. (Section 2421, Title 18, U. S. C. A. — Section 371, Title 18 U. S. C. A.).

The case was tried before a jury resulting in the conviction on the conspiracy charge.

Petitioners contended no commercial prostitution was involved, nor was any immoral purpose contemplated, nor did it occur. The United States attorney presented evidence from the accomplices who testified that such actions did occur and had been planned.

The jury evidently believed this testimony and voted the conviction in spite of conflicting testimony and a serious challenge to the credibility of the prosecution witnesses.

REASONS FOR GRANTING WRIT

The practice (ever increasing) by the prosecution of attempting to convince the federal trial juries that they are part of the prosecution; that they have a duty to enforce the laws rather than to decide the facts; further, by implication, charging that acquittal would mean condoning this type of alleged crime. (R 790-791, L 1 to 3)

The Petitioners wanted experienced counsel, Mr. William Scott, to try their case assisted by Mr. Much, who later represented them. (R 3, L 13-23).

Counsel for petitioners indicated that at the time the trial commenced, he was not as familiar with the facts as was his proposed co-counsel (R 3, L 13-23).

The United States Attorney did not oppose the motion for experienced counsel to participate in the defense of the cause.

Petitioners were denied Mr. Scott's assistance and the case was tried with Mr. Much as their lone attorney. The trial court did not ask or request an opinion from the Petitioners as to whether he still desired counsel in addition to Mr. Much.

The totality of the harm from inexperience can best and only be appreciated when the record as a whole is examined.

Trial Counsel had considerable trouble with his interroation, objections, and evidentiary tenders. To say he exhibited a marked unfamiliarity with these basic trial fundamentals would be a conservative appraisal.

Both the remarks of trial counsel for the government during argument and the successful introduction into evidence of considerable objectionable and highly inflammatory matters, effectively denied petitioners any chance at a fair and impartial trial. Defense Counsel neither successfully objected or made any tactical effort to protect the petitioners rights in this regards.

In *Gray* v. *United States* (1962) 112 U. S. App. D. C. 86, 299 F. 2d 467 it was recognized that a charge of ineffective assistance of counsel should not be sustained unless it clearly appears well grounded. This is a case wherein the test of being well grounded has been clearly met.

Counsel himself advised the court on numerous occasions that he was unfamiliar with the court's procedures and the Rules of Criminal Procedure. (R 403, L 27; R 408, L 5-8), (R 32, L 21-25) (R 33, R 34-35), (R 50, 51). The record as cited above reflects numerous examples of such trial inadequacy, that extended argument thereon is unnecessary.

The failure to stop extraneous evidentiary tenders concerning barbiturates; attempted rape; oral sodomy; an after the conspiracy trip; and non-responsive answers injecting possession of a firearm illegally, effectively denied petitioners due process.

The trial court, evidencing some impatience with counsel's obvious lack of experience at page 614, Lines 2 to 17, questioned counsel's ability to explain to the court what he was trying to say and do.

Defense counsel himself acknowledged his inability to express himself and to intelligently utilize defensive objections to objectionable evidentiary tenders.

This was a case, wherein the trial court, having denied petitioners the right to assistance of experienced trial counsel, allowed the trial to continue without petitioners having benefit of adequate defense counsel.

It has been held that lack of effective trial representation by counsel means representation so lacking in competence that it becomes the duty of the court or the prosecution to observe and correct it.

The court recognized evidence of counsel's ineptness, but did not correct it. The United States Attorney recognized this lack of effective defense counsel and took full tactical advantage of it.

The Fifth Circuit, in *Collingsworth* v. *Mayo*, 5 Cir., 173 F. 2d 695, pointed out that the assistance of counsel included consultation and understanding of the accuseds case before trial, a consideration of his special interest in cross-examination of witnesses, and production of defensive evidence; further, it includes the making of the argument and the proper objections.

Taking the record herein, in its full context, the performance of defense trial counsel falls far short of being effective.

The practice of law is an art, as well as a science; the mere presence of an attorney can do not more than raise a presumption of adequate representation. A look at the record by a dispassionate court, in this case, will quickly reflect that defense counsel, however vocal, was not and did not adequately represent the interests of these petitioners.

Errorless counsel simply don't exist as a matter of reality; however, the court is confronted here with a situation wherein there "was a total failure to present the cause of the accused in any competent fundamental respect." *United States* v. *Garguilo,* 325 F. 2d 796; *Brubaker* v. *Dickson,* 310 F 2d 310, (9th Cir., 1962), Cer. den. 372 U.S. 798, 83 S. Ct. 1110, 10 L. Ed. 2d 143.

CONCLUSION

The importance of effective counsel in the basic protection of the individual strikes at the heart of the American jurisprudence system. The need for a clear determination of the basic requirements of competency to insure due process and a fair administration of justice.

The recognition of the permissive bounds allowed the prosecution in catagorizing the jury's responsibility affects every defendant in future trials. To condone or sanction the prosecution placing the jury in a position of law enforcement rather than that of objective fact finding that our jury system requires, does violence to the system.

Respectfully submitted,

EDDINGTON, KROLL, FRILOUX & SMITH

By .....

C. ANTHONY FRILOUX, JR.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari was mailed to Morton Susman, United States Attorney, Federal Building, Houston, Texas, and to the Solicitor General, Department of Justice, Washington 25, D. C., postage prepaid, on this the ..... day of ....., 1968.

.....

C. Anthony Friloux, Jr.

APPENDIX "A"

IN THE

Supreme Court of the United States

FOR THE FIFTH CIRCUIT

No. 24459

HUEY P. MEAUX AND CHARLIE BOOTH,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeals from the United States District Court for the Southern District of Texas.

(January 4, 1968.)

Before TUTTLE and GEWIN, Circuit Judges, and HUNTER, District Judge.

PER CURIAM: The appellants, Huey Meaux and Charlie Booth, were charged with conspiracy to transport a fifteen and one-half year old female in interstate commerce for the purposes of prostitution in violation of the Mann Act, Title 18 U.S.C. § 371, Title 18 U.S.C. § 2421. The case was tried before a jury and a verdict of guilty was

returned. In their briefs and oral argument before this Court the appellants raise two contentions: (1) the argument of the prosecutor was highly inflammatory and improper, and (2) appellants were denied the effective assistance of trial counsel. After an examination of the record and the pertinent authorities we have concluded that there is no merit in these contentions. *Root* v. *Cunningham,* 344 F.2d 1 (4 Cir. 1965); *Thompson* v. *United States,* 272 F.2d 919 (5 Cir. 1960); *Thomas* v. *Cassidy,* 249 F.2d 91 (4 Cir. 1957); *United States ex rel Darcy* v. *Hand,* 203 F.2d 407 (3 Cir. 1953); *United States ex rel Hanby* v. *Ragen,* 178 F.2d 379 (7 Cir. 1949); *United States ex rel Weber* v. *Ragen,* 176 F.2d 579 (7 Cir. 1949).

Supplemental briefs filed after oral argument call our attention to parts of the record which reflect statements by counsel and certain evidentiary facts revealed during the trial. We find nothing in these supplemental briefs which causes us to change our conclusion that the judgment should be affirmed.

The judgment is AFFIRMED.